IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 10483

LATTAVO BROTHERS, INC.,
Plaintiff-Appellant

vs.

CAPT. ANDREW J. HUDOCK,
Defendant-Appellee

STATEMENT OF JURISDICTION

This action was instituted to restrain Defendant-Appellee, Hudock, from enforcing certain gross weight limitations against Plaintiff-Appellant's trucks, moving in interstate commerce. A District Court of three judges denied relief on November 12, 1953. See Section 2284, Chapter 157, Title 28, U.S.C. The Supreme Court has jurisdiction of this appeal. See Section 1253, Chapter 157, Title 28, U.S.C.

District Judge Marsh allowed the appeal in the above entitled matter on December 7, 1953.

The federal questions raised in this appeal are material and substantial as follows:

1. Are the restrictions imposed by Hudock upon Lattavo's trucks as alleged, an unreasonable burden upon interstate commerce?
2. Why did the District Court refuse to apply the rules of law established by this Court in *Sou. Pac. R.R.*

v. *Arizona*, 325 U.S. 761 and *Morgan* v. *Virginia*, 328 U.S. 371?

3. Is the United States Supreme Court or the State Legislature, under the Commerce Clause of the Constitution, the final arbiter between the competing claims of power to regulate by the National and State governments?

Attention is directed to the list of papers to be transmitted by the Clerk of the Court, as it contains the material and necessary papers for proper consideration of the appeal, under paragraph #3 of U.S.S.C. Rule 12. Attention is directed to this Rule which permits Appellee's counsel to file objections to this statement.

ERNIE ADAMSON,
Counsel for Appellant.

December 22, 1953.

APPENDIX

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 10483

LATTAVO BROTHERS, INC., *Plaintiff*,

v.

CAPTAIN ANDREW J. HUDOCK, Commanding Squadron One, Pennsylvania State Police, *Defendant*

Coram: STALEY, *Circuit Judge*, and GOURLEY, *Chief District Judge*, and MARSH, *District Judge*

OPINION

STALEY, *Circuit Judge:*

This is a suit for a permanent injunction, restraining defendant from enforcing certain of the weight limitations of the Pennsylvania Motor Vehicle Code against plaintiff's vehicles. Most of the important facts were stipulated.

Plaintiff, an Ohio corporation, is a common carrier by motor truck and operates between points in Ohio and western Pennsylvania under a consolidated certificate issued by the Interstate Commerce Commission. Defendant commands the squadron of the Pennsylvania State Police having jurisdiction of that part of the state over which plaintiff operates.

In carrying out their duty to enforce the maximum weight provisions of the Pennsylvania Motor Vehicle Code, defendant's subordinates have stopped and weighed plaintiff's vehicles and, when found to be overweight, have detained the vehicle until the excess was removed and arrested and caused the driver to be fined. There appear to have been quite a few such incidents, but the one that brought matters to a head occurred on March 11, 1952. On that day, defendant's subordinates stopped and weighed petitioner's

truck and four-wheeled trailer in Freedom, Beaver County, Pennsylvania. The outfit as a whole was found to be within the legal limits, but the gross weight of the four-wheeled trailer was 30,680 pounds, which was 3,380 pounds over the maximum gross weight allowed by Section 903(c) of the Motor Vehicle Code [1] for a Class G four-wheeled trailer. This vehicle was registered under the laws of Ohio.

Plaintiff asserts that the application of the maximum-weight laws of the Pennsylvania Motor Vehicle Code to its vehicles, traveling in interstate commerce and properly registered and in compliance with Ohio's maximum weight law, imposes an unreasonable burden upon interstate commerce, in violation of the Commerce Clause of the Federal Constitution. Because of this attack upon the enforcement of a state statute on grounds of unconstitutionality, a statutory court of three judges was convened. [2]

Except for one or two points which we will discuss later, plaintiff's contentions do not present a substantial federal question. It is no longer open to dispute that a state, in the exercise of its police power and in the absence of Congressional action, may impose reasonable restrictions upon the weight and size of vehicles which travel over its highways, equally applicable to intrastate and interstate commerce, without running afoul of the Commerce or Due

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[1] "(c) Trailers and semi-trailers, except trailers designed and used exclusively for living quarters, shall not be used or operated on any highway with gross weight exceeding those specified for the several classes as follows:

Four-Wheeled (2 Axles)

Class	Trailer or Semi-Trailer Weight in Pounds	Maximum Gross Weight in Pounds
•	• • • • • •	•
G	6000 and over	26,000"

Act of May 1, 1929, P.L. 905, 75 Purdon's Pa. Stat. Ann. § 453(c) (1953).

The apparent discrepancy in the excess weight is explained by the penalty provisions of Section 903 which, in effect, grant a 5% tolerance.

[2] 28 U.S.C. §§ 2281 and 2284.

Process Clauses. Maurer *v.* Hamilton, 309 U. S. 598 (1940); South Carolina State Highway Department *v.* Barnwell Brothers, Inc., 303 U. S. 177 (1938); Sproles *v.* Binford, 286 U. S. 374 (1932); Morris *v.* Duby, 274 U. S. 135 (1927). Those cases give a conclusively adverse answer to nearly every one of the many points raised by plaintiff. If this were all there were to the case, there would have been no justification for convening three judges. California Water Service Co. *v.* City of Redding, 304 U. S. 252 (1938); Oklahoma Gas & Electric Co. *v.* Oklahoma Packing Co., 292 U. S. 386 (1934). There is more, however, and it is the interesting part.

Section 409(b) [3] of the Pennsylvania Motor Vehicle Code authorizes the Secretary of Revenue to enter into agreements with other states, exempting residents of those states from compliance with Pennsylvania's law relating to equipment, inspection, size, weight, and construction of vehicles which may be operated in Pennsylvania, provided that such residents comply with the laws of their state and provided that like exemptions are granted to Pennsylvania residents when using the highways of the other state. There was introduced into evidence a letter, dated September 6, 1938, from the then Secretary of Revenue to the Secretary of State of the State of Delaware, to the effect that Pennsylvania weight limitations would not apply to vehicles while in Pennsylvania if they were registered in Delaware and in compliance with Delaware's laws, when carrying loads originating outside of Pennsylvania. The evidence shows that that reciprocal agreement was cancelled as of April

[3] "(b) The secretary shall also have the authority to make agreements with the duly authorized representatives of other states, exempting the residents of such other states using the highways of this Commonwealth from compliance with any or all of the provisions of article eight and article nine of this act, with such restrictions, conditions, and privileges, or lack of them, as he may deem advisable, providing that all vehicles owned by nonresidents shall conspicuously display a registration plate, and comply with all the provisions of the laws of the state of residence of their owner relating to equipment of vehicles, and that residents of this Commonwealth, when using the highways of such other state, shall receive exemptions of a similar kind to a like degree." Act of May 1, 1929, P.L. 905, § 409, as amended, 75 Purdon's Pa. Stat. Ann. § 99(b) (1953).

20, 1952, and it appears to have been the only one ever entered into. Plaintiff asserts, however, that, because of the Delaware agreement, Pennsylvania weight laws discriminated unfairly against citizens of other states and that the effect of Section 409(b) of the Motor Vehicle Code was to abrogate weight-limit laws in Pennsylvania and to show that they were not at all related to safety or preserving the roads. It is said that since the Secretary may agree to allow trucks operated by residents of other states to operate in Pennsylvania at the weights allowed by their home states, Pennsylvania might have forty-eight different weight laws, having nothing to do with safety. Thus, the argument goes, the weight restrictions are an invalid exercise of the police power. In reply, defendant insists that, even if Section 409(b) were unconstitutional, it is severable and, therefore, does not taint the entire weight-restriction scheme. Section 409(b) had never been interpreted by the Pennsylvania courts. Consequently, in accordance with Shipman *v.* DuPre, 339 U. S. 321 (1950), and American Federation of Labor *v.* Watson, 327 U. S. 582 (1946), we retained jurisdiction of the cause but stayed proceedings in this court to afford the parties an opportunity to obtain a determination of the constitutionality of Section 409(b) and the interrelated weight-limitation provisions by the state courts and, if unconstitutional, a determination as to severability. The defendant in this court brought a declaratory judgment action in the Court of Common Pleas of Dauphin County. That court assumed Section 409(b) to be unconstitutional but held it severable from the remainder of the Code.[4] The court traced the history of the Motor Vehicle Code, stating that, as originally enacted in 1929, it did not contain Section 409(b) or any similar subsection. That subsection was an amendment, enacted in 1937. Both the 1929 Act and the 1937 amendment contained identical severability clauses.[5] In 1939, Section 409 was further

[4] No. 41 Commonwealth Docket 1953.

[5] "The provisions of this act are severable, and, if any provision thereof is held to be unconstitutional, the decision so holding shall not be construed as affecting or impairing any other provision of this act or the act as a whole. It is hereby declared as the legislative intent that this act would

amended, but not as to subsection (b). Furthermore, the Statutory Construction Act has more to say about severability.[6] The Dauphin County Court adverted also to the rule that a statute, itself constitutional, is not affected by an unconstitutional amendment. Frost *v.* Corporation Commission, 278 U. S. 515, 526-527 (1929); Mazurek *v.* Farmers' Mut. Fire Ins. Co., 320 Pa. 33, 181 Atl. 570 (1935).

As we have said, we have a state determination of severability but not by the state's highest court. In the state action, the plaintiff was successful and could not, and the defendant did not, appeal. We must accept a state's determination of the severability of the various sections of its own statute. Allen-Bradley Local *v.* Wisconsin Employment Relations Board, 315 U. S. 740, 747-748 (1942). Nor may we deviate from that determination because it is not a pronouncement of the highest court of the state. Fidelity Union Trust Co. *v.* Field, 311 U. S. 169 (1940). *But cf.* King *v.* Order of United Commercial Travelers, 333 U. S. 153 (1948). Indeed, we are not only not "* * * convinced * * * that the highest court of the state would decide otherwise," West *v.* American Telephone & Telegraph Co., 311 U. S. 223, 237 (1940), but we are convinced that the Supreme Court of Pennsylvania would hold just as the Court of Common Pleas of Dauphin County did.

With Section 409(b) severable from the weight provisions of the Motor Vehicle Code, plaintiff's argument that that subsection made the weight limits bad by showing that

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have been adopted had such unconstitutional provision not been included therein."Act of May 1, 1929, P.L. 905, § 105, 75 Purdon's Pa. Stat. Ann. § 5 (1953). Section 20 of the Act of June 29, 1937, P.L. 2329 was identical to that quoted above

[6] "The provisions of every law shall be severable. If any provision of a law is found by a court of record to be unconstitutional and void, the remaining provisions of the law shall, nevertheless, remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so depend upon, the void provision, that it cannot be presumed the Legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." Act of May 28, 1937, P.L. 1019, § 55, 46 Purdon's Pa. Stat. Ann. § 555 (1952).

they were not based upon considerations of safety or highway preservation fails. The alternative contention, that Section 409(b) plus the Delaware agreement, but considered quite apart from the weight sections of the Code, was discriminatory against Ohio residents, fails for lack of a present showing of harm. That is, the Delaware agreement has been cancelled, and, without it, plaintiff cannot show that he now suffers. This he must do, for the right to relief by injunction depends upon the factual situation as of the time of the decree rather than as of the filing of the bill. United Corporation *v.* Federal Trade Commission, 110 F. 2d 473 (1940).

Finally, plaintiff points to supposedly contradictory provisions as to weight and speed and concludes that the weight restrictions are unreasonable because in reality they are wholly unrelated to safety. For instance, by Section 903(a) the maximum weight of a Class Z gas-powered commercial vehicle is 30,000 pounds, while by Section 903(b) an electrically powered commercial vehicle of the same class may weigh only 26,000 pounds; Section 1002(c) allows buses to go twenty miles per hour faster than truck-trailer combinations even though the latter may have more tires and brake drums than the bus. But these putative inequities have not been shown to have harmed plaintiff. It may not conjure possible harm to some future plaintiff; it may complain only of those features of the Code that injure it. Watson *v.* Buck, 313 U. S. 387, 402 (1941); Commonwealth v. Alderman, 275 Pa. 483, 119 Atl. 551 (1923). Nor is the Motor Vehicle Code unconstitutional because it does not cure every highway problem at one stroke. Keokee Consolidated Coke Co. *v.* Taylor, 234 U. S. 224 (1914); Patsone *v.* Pennsylvania, 232 U. S. 138 (1914).

Plaintiff has made other contentions which we find without merit.

For the reasons stated, plaintiff's petition will be dismissed at its cost.

Upon all the evidence we make the following

Findings of Fact

1. Plaintiff, an Ohio corporation, is a common carrier by motor truck between points in Ohio and western Penn-

sylvania under a consolidated certificate issued by the Interstate Commerce Commission.

2. Defendant commands Squadron One of the Pennsylvania State Police and, as such, supervises the administration and enforcement of the Pennsylvania Motor Vehicle Code over that part of Pennsylvania to which plaintiff's operations are confined.

3. The amount in controversy exceeds $3,000, exclusive of interest and costs.

4. On March 11, 1952, members of the Pennsylvania State Police who are subordinates of defendant stopped and weighed one of plaintiff's vehicles in Freedom, Beaver County, Pennsylvania. This vehicle consisted of a truck and four-wheeled trailer and was duly registered under the laws of Ohio. Plaintiff operates other trucks which are also registered under the laws of that state.

5. The respective weights of the truck and trailer were as follows:

Front axle of truck	6,830	pounds
Rear axle of truck	16,800	"
	23,630	"
Front axle of trailer	16,100	"
Rear axle of trailer	14,580	"
	30,680	"

The maximum gross weight allowed the trailer under Section 903(c) of the Pennsylvania Motor Vehicle Code is 26,000 pounds.

6. The reduction of the gross weights of plaintiff's trucks to the limits prescribed by the laws of Pennsylvania will reduce the pay load which may be hauled by plaintiff and, consequently, will reduce plaintiff's gross revenue.

7. Pennsylvania and Ohio have received substantial sums of money from the United States under the Federal Highway Act in order to aid them in the construction of their highways.

8. The highway upon which plaintiff's vehicle was weighed in Freedom, as alleged, was a primary highway in the federal aid system.

9. The use of lighter metals than steel in the manufacture of trucks would permit a corresponding increase in the weight of the load carried, but plaintiff does not own any trucks made of such lighter metals.

10. By letter of September 6, 1938, the then Secretary of Revenue of the Commonwealth of Pennsylvania wrote the then Secretary of State of the State of Delaware to the effect that Pennsylvania weight limitations would not apply to vehicles while in Pennsylvania if they were registered in Delaware and were in compliance with Delaware's laws, when carrying loads originating outside of Pennsylvania.

11. The agreement set out in Finding No. 10 was cancelled, effective April 20, 1952, by letter from the Secretary of Revenue of the Commonwealth of Pennsylvania to the Secretary of State of the State of Delaware, dated April 7, 1952.

12. The agreement set out in Finding No. 10 was the only one of its kind ever entered into, and no such agreement is now in effect.

Conclusions of Law

1. This court has jurisdiction of this action by virtue of Sections 1331, 1332, 2281, and 2284 of the Judicial Code.

2. Section 904 of the Pennsylvania Motor Vehicle Code, Act of May 1, 1929, P. L. 905, 75 Purdon's Pa. Stat. Ann. § 454 (1953), authorizes members of the Pennsylvania State Police to weigh motor vehicles and their loads if they have reason to believe that the weight of such vehicle and load is in excess of the limits prescribed by law, including the limits set out in Section 903(c); Section 1203(a), Act of May 1, 1929, P. L. 905, 75 Purdon's Pa. Stat. Ann. § 733 (1953), of the Code authorizes members of the Pennsylvania State Police to arrest any person violating any provisions of said Code, including the weight limits prescribed by Section 903(c), and to file informations for such violations with the magistrate before whom the arrested person is taken.

3. Plaintiff's four-wheeled trailer, weighed as described

in Findings Nos. 4 and 5, was 3,380 pounds in excess of the maximum gross weight allowed by Section 903(c) of the Pennsylvania Motor Vehicle Code.

4. The maximum gross weight limit prescribed by Section 903(c) of the Pennsylvania Motor Vehicle Code applies to all vehicles of that class traveling on Pennsylvania highways, including vehicles registered under the laws of the State of Ohio.

5. A state, in the exercise of its police power and in the absence of Congressional action, in order to promote the safety of the traveling public upon its highways and in order to conserve their use, may constitutionally impose reasonable restrictions upon the weight of vehicles which travel over its highways, equally applicable to intrastate and interstate commerce.

6. Plaintiff has failed to prove that the maximum gross weight limit of Section 903(c) is unreasonable.

7. The fact that the United States has contributed funds toward the cost of constructing a highway in Pennsylvania does not preclude Pennsylvania from imposing reasonable and nondiscriminatory weight limits upon vehicles using that highway.

8. The maximum gross weight limit prescribed by Section 903(c) is a reasonable exercise of the police power and, therefore, the fact that compliance with that limit reduces plaintiff's revenue or causes a loss to plaintiff does not render the proscription unconstitutional.

9. Section 409(b) of the Pennsylvania Motor Vehicle Code, authorizing the Secretary of Revenue to enter into reciprocal agreements with other states exempting residents of the latter from compliance with Articles 8 and 9 of the Code, as such Section 409(b) appears in the amending Act of June 29, 1937, P. L. 2329, is severable from the weight limitation provisions of the original Motor Vehicle Code of May 1, 1929, P. L. 905 and the other amendments contained in the amending Act of June 29, 1937, P. L. 2329. Therefore, even if the amendment sought to be made by Section 409(b) were unconstitutional, it would not affect the weight limitation contained in Section 903(c).

10. The federal courts must accept a determination by a state court that a portion of that state's statute is severable from the remainder.

11. The right to relief by injunction depends upon the facts that exist when the decree is to be entered.

12. One attacking the unconstitutionality of a statute may complain of only those provisions which injure him.

13. Plaintiff's petition should be dismissed at its cost.

AUSTIN L. STALEY,
Circuit Judge;
WALLACE S. GOURLEY, D. J.,
Chief District Judge;
RABE F. MARSH,
District Judge.

November, 1953.

JAN 18 19
HAROLD B. WILLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 539

LATTAVO BROTHERS, INC.,
Appellant,

vs.

CAPTAIN ANDREW J. HUDOCK, COMMANDING SQUAD ONE, PENNSYLVANIA STATE POLICE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Appellee states that the appellant's statement of jurisdiction presents no substantial Federal question. The questions presented therein have been decided by this Court in numerous decisions.

1. The findings of fact and conclusions of law amply justified the decision of the court. We call attention to the following:

"FINDINGS OF FACT

"4. On March 11, 1952, members of the Pennsylvania State Police who are subordinates of defendant stopped and weighed one of plaintiff's vehicles in Freedom,

Beaver County, Pennsylvania. This vehicle consisted of a truck and four-wheeled trailer and was duly registered under the laws of Ohio. * * *

"5. The respective weights of the truck and trailer were as follows:

Front axle of truck	6,830 pounds
Rear axle of truck	16,800 pounds
	23,630 pounds
Front axle of trailer	16,100 pounds
Rear axle of truck	16,800 pounds
	30,680 pounds

"The maximum gross weight allowed the trailer under Section 903(c) of the Pennsylvania Motor Vehicle Code is 26,000 pounds."

"Conclusions of Law

"5. A state, in the exercise of its police power and in the absence of Congressional action, in order to promote the safety of the traveling public upon its highways and in order to conserve their use, may constitutionally impose reasonable restrictions upon the weight of vehicles which travel over its highways, equally applicable to intrastate and interstate commerce.

"6. Plaintiff has failed to prove that the maximum gross weight limit of Section 903(c) is unreasonable.

* * * * * * *

"8. The maximum gross weight limit prescribed by Section 903(c) is a reasonable exercise of the police power * * *"

This Court has repeatedly held that so long as Congress does not act, a State may prescribe a regulation to promote the safety of its highways and to serve their use, including

restrictions upon the weight and size of trucks employed in interstate commerce:

S. C. State Highway Department v. *Barnwell,* 303 U. S. 177, 187, 189 (1938);
Railway Express v. *New York,* 336 U. S. 106, 111 (1949);
Sproles v. *Binford,* 286 U. S. 374, 388, 390 (1932);
Morris v. *Duby,* 274 U. S. 135, 143-145 (1927).

2. Apellant cities the cases of *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761 (1945), and *Morgan* v. *Virginia,* 328 U. S. 371 (1946).

The case involved in this appeal is distinguished by the following language from *Southern Pacific Co.* v. *Arizona, supra:*

> "South Carolina Highway Dept. v. Barnwell Bros., supra, was concerned with the power of the state to regulate the weight and width of motor cars passing interstate over its highways, a legislative field over which the state has a far more extensive control than over interstate railroads. In that case, and in *Maurer* v. *Hamilton,* supra, we were at pains to point out that there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways. Unlike the railroads local highways are built, owned and maintained by the state or its municipal subdivisions. The state is responsible for their safe and economical administration. Regulations affecting the safety of their use must be applied alike to intrastate and interstate traffic. The fact that they affect alike shippers in interstate and intrastate commerce, in great numbers, within as well as without the state, is a safeguard against regulatory abuses. Their regulation is akin to quarantine measures, game laws, and like local regulations of rivers, harbors, piers, and docks, with respect to which the state has exceptional scope for the

exercise of its regulatory power, and which, Congress not acting, have been sustained even though they materially interfere with interstate commerce (303 U. S. at 187-188 and cases cited)." (p. 783)

3. We agree that the United States Supreme Court is the final arbitrator between competing claims of power to regulate between National and State governments.

Appellee submits that the attached motion to dismiss or affirm should be granted.

HARRY F. STAMBAUGH,
Special Counsel;
FRANK F. TRUSCOTT,
Attorney General.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 10483

LATTAVO BROTHERS, INC.

vs.

CAPTAIN ANDREW J. HUDOCK

STATEMENT OF JURISDICTION

Motion to Dismiss or Affirm

Now comes the respondent, the Commonwealth of Pennsylvania and moves that the appeal in the above case be dismissed on the ground that the case presents no substantial Federal question, and it further moves that, if the motion to dismiss be not granted, this court affirm the decision of the Supreme Court of Pennsylvania on the ground that the questions on which the decision of this cause depends, are so unsubstantial as not to need further argument. In support of this motion the appellee advances the reasons set forth in the statement opposing jurisdiction filed by respondent in connection with this appeal.

HARRY F. STAMBAUGH,
Special Counsel;
FRANK F. TRUSCOTT,
Attorney General.

JAN 18 195
HAROLD B. WILLEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 539

Civil Action No. 10483

LATTAVO BROTHERS, INC.

v.

CAPTAIN ANDREW J. HUDOCK, ETC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

APPELLANT'S MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

Counsel for appellant respectfully directs the attention of the Court to the following points in opposition to the motion to dismiss or affirm.

1. The case at bar is unique in that it is the first one to be presented to this Court under such circumstances. In this case there is *no* evidence tending to show that the peculiar weight restrictions here in issue were or are related to safety or that the highways involved will not

carry the vehicles in question without danger. No such defense was presented.

2. The record does show that the appellee;

(a) permitted trucks licensed in the State of Delaware to run all over Pennsylvania, exempt from the same weight law here in issue, for fourteen years.

(b) that all four wheeled motor vehicles are permitted to weigh 30,000 pounds plus 5%, yet appellant's trailers (four wheeled) were arrested for exceeding a weight of 26,000 pounds plus 5%. (See Sec. 903(e) Pennsylvania Vehicle Code).

(c) has ignored the fact that the Federal Aided Highways are the same in Pennsylvania as in Ohio where appellant's vehicles are allowed to operate at much greater weights.

(d) that the so-called reciprocal weight law under which the Delaware agreement was made, remains in full effect. All the decisions cited and relied upon by appellee were based upon evidence of physical limitations in the highways.

3. Appellee does not contend that the weight restrictions here in issue are based upon public health or safety, he does contend that he has arbitrary power to impose this burden upon interstate trucks regardless of the circumstances or the Commerce Clause of the Constitution. The question is clear-cut and precise. Does the State have arbitrary power to impose needless burdens upon interstate commerce? We have come to the question at last.

Appellee's motion should be denied and the decision of the District should be reversed.

ERNIE ADAMSON,
Attorney for Appellant.

Copy mailed to Appellee's Counsel, January 16, 1954.
ERNIE ADAMSON.

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JAN 29 1954
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1953

NO. 539

LATTAVO BROTHERS, INC., Appellant,

v.

CAPTAIN ANDREW J. HUDOCK, Commanding Squad One, Pennsylvania State Police

Appeal from the United States District Court for the Western District of Pennsylvania

APPELLEE'S REPLY TO "APPELLANT'S MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM".

Appellant's so-designated memorandum states that a copy was mailed to appellee's counsel on January 16, 1954. The envelope enclosing a copy of memorandum to counsel for appellee is postmarked "Harrisburg, January 18, 1954, 4:30 p.m., 1954". On the same date counsel for appellant mailed the transcript of record to the Clerk of this Court. Hence it was impossible for counsel for appellee to include this reply in the transcript of record.

The contentions of counsel for appellant will be considered in order.

> "1. * * * In this case there is *no* evidence tending to show that the peculiar weight restrictions here in issue were or are related to safety or that the

highways involved will not carry the vehicles in question without danger. No such defense was presented."

Appellant's petition for injunction did not allege that the weight limits of the Pennsylvania Vehicle Code were unreasonable, and this Court has held that the burden of proving that the statutory weight limits are unreasonable, is upon the motor carrier; *South Carolina Highway Department v. Barnwell Bros.*, 303 U. S. 177, 191-192, 195 (1938); *Morris v. Duby*, 274 U. S. 135, 144 (1927).

The Court below adopted the following conclusions of law:

"6. Plaintiff has failed to prove that the maximum gross weight limit of Section 903(c) is unreasonable.

* * * * * * *

"8. The maximum gross weight limit prescribed by Section 903(c) is a reasonable exercise of the police power and, therefore, the fact that compliance with that limit reduces plaintiff's revenue or causes a loss to plaintiff does not render the prescription unconstitutional."

"2. The record does show that the appellee;

"(a) permitted trucks licensed in the State of Delaware to run all over Pennsylvania, exempt from the same weight law here in issue, for fourteen years."

The evidence does not support this statement. Plaintiff-appellant offered in evidence as Exhibit 7 a photostat copy of a letter dated September 6, 1938 from the Secretary of Revenue of Pennsylvania to the Secretary of State of Delaware, stating in substance that Dela-

ware motor vehicles which comply with the weight limits of that State and carried loads originating outside of Pennsylvania might operate in Pennsylvania, and that the Pennsylvania load limits should not apply. This statement was purported to be made under Section 409 (e) of the Pennsylvania Vehicle Code, 75 Purdon's Penna. Stat. Section 99 (e), and to be part of a reciprocal agreement that Pennsylvania trucks, whose loads complied with the Pennsylvania limits could operate in Delaware. Any such reciprocal agreement was rescinded, effective April 20, 1952.

The Court below made the following findings of fact:

"11. The agreement set out in Finding No. 10 was cancelled, effective April 20, 1952, by letter from the Secretary of Revenue of the Commonwealth of Pennsylvania to the Secretary of State of the State of Delaware, dated April 7, 1952.

"12. The agreement set out in Finding No. 10 was the only one of its kind ever entered into, and no such agreement is now in effect."

The evidence further showed that even prior to the cancellation of the Delaware agreement, Pennsylvania State Policemen in Captain Hudock's district arrested drivers of Delaware trucks if the load exceeded the limits prescribed in the Pennsylvania Vehicle Code, and without any regard to any Delaware agreement. See transcript of proceedings, pages 90-94; 105, 108; 113-115; and appellee's exhibit D-1 to 12.

"2. The record does show that the appellee;

"(b) that all four-wheeled motor vehicles are permitted to weigh 30,000 pounds plus 5%, yet appellant's trailers (four-wheeled) were arrested for

exceeding a weight of 26,000 pounds plus 5%. (See Sec. 903(e) Pennsylvania Vehicle Code)."

Plaintiff-appellant offered no evidence to prove that such load limits were unreasonable.

Appellant was charged by Pennsylvania with a violation of subsection (c) of Section 903 of the Pennsylvania Vehicle Code, 75 Purdon's Penna. Stat. Section 453 (c) which is as follows:

"(c) Trailers and semi-trailers, except trailers designed and used exclusively for living quarters, shall not be used or operated on any highway with gross weight exceeding those specified for the several classes as follows:

Four-Wheeled (2 Axles) Trailer or Semi-Trailer Class.	Weight in Pounds.	Maximum Gross Weight in Pounds.
A.	Less than 1000,	3000
B.	1000 and over, but less than 2000,	6000
C.	2000 and over, but less than 3000,	10000
D.	3000 and over, but less than 4000,	16000
E.	4000 and over, but less than 5000,	20000
F.	5000 and over, but less than 6000,	24000
G.	6000 and over,	26000"

The combined weight of appellant's four-wheeled trailer and load was 30,680 pounds, or 4,680 pounds over the maximum weight allowed by this section.

Appellant offered no proof that this figure for the weight was incorrect.

Appellant relied upon subsection (e) of Section 903 which provided that no four-wheeled vehicle should be operated with a gross weight in excess of 30,000 pounds.

However, this subsection (e) applied to subsection (a) which permitted a *truck* to carry a maximum gross weight of 30,000 pounds as well as to subsection (c) which permitted a four-wheeled *trailer* to carry a maximum gross weight of 26,000 pounds. This subsection (e) was not intended to change the maximum limits in either subsection (a) or subsection (c). The figure 30,000 is used in subsection (e) because trucks under subsection (a) are permitted to carry a gross maximum weight of 30,000 pounds.

"2. The record does show that the appellee;

"(c) has ignored the fact that the Federal Aided Highways are the same in Pennsylvania as in Ohio where appellant's vehicles are allowed to operate at much greater weights."

Appellant offered no proof that Federal-aided highways in Ohio are the same in construction and weight-carrying capacity as in Pennsylvania. Even if the roads were the same, each state is entitled to determine for itself what loads the roads can safely carry, in the absence of action by Congress. Ohio roads are comparatively level, whereas Pennsylvania roads contain steep grades, on which wear and tear is greater.

This court has held that although the Federal government contributes money in aid of the construction of State highways, "the maintenance after construction is primarily imposed on the State. Regulation as to the method of use, therefore, necessarily remains with the State". *Morris v. Duby,* 274 U. S. 135, 144-145 (1927).

"2. The record does show that the appellee;

"(d) that the so-called reciprocal weight law under which the Delaware agreement was made, re-

mains in full effect. All the decisions cited and relied upon by appellee were based upon evidence of physical limitations in the highways."

As already stated under (a), *supra*, any reciprocal agreement between Pennsylvania and Delaware was terminated, effective April 20, 1952, and the Court below found this as a fact.

3. "Appellee does not contend that the weight restrictions here in issue are based upon public health or safety, he does contend that he has arbitrary power to impose this burden upon interstate trucks regardless of the circumstances or the Commerce Clause of the Constitution. * * *"

This quotation does not fairly state appellee's position. Appellee did contend, and this Court has repeatedly held, that the safety of persons and property, and the preservation of costly highways is sufficient to justify limitation of size and weight of trucks on the highways of a State.

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Attorney General,

Attorneys for Appellee.

No. 539. LATTAVO BROTHERS, INC. *v.* HUDOCK. Appeal from the United States District Court for the Western District of Pennsylvania. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. *Ernie Adamson* for appellant. *Frank F. Truscott*, Attorney General of Pennsylvania, and *Harry F. Stambaugh* for appellee. Reported below: 119 F. Supp. 587.